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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/325,296	06/03/1999	BRYAN L. REIDENBACH	1493-M	2647

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12/02/2003

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EXAMINER

NEWHOUSE, NATHAN JEFFREY

ART UNIT PAPER NUMBER

3727

DATE MAILED: 12/02/2003

26

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/325,296

Applicant(s)

REIDENBACH, BRYAN L.

Examiner

Nathan J. Newhouse

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-- Th MAILING DATE of this communication appears on the cover sheet with th correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 September 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,5-14, 17,21-32,34-38,40-73 and 75-89 is/are pending in the application.
- 4a) Of the above claim(s) 12-14,17,21-32,34-38,40,42,47,50-68 and 75-88 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1,5-11 and 69-73 is/are allowed.
- 6) ☒ Claim(s) 41,43-46,48,49 and 89 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

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DETAILED ACTION

Election/Restrictions

1. Claims 14, 17, 21-32, 34-38, 40, 51-68 and 77-88 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in Paper No. 20.
2. Claims 12-13, 42, 47, 50 and 75-76 are withdrawn as being drawn to a nonelected species, even though these claims were stated to read on the elected species of figures 10-12. Claim 12 is directed to the blocking and clamping protrusion on species shown in figures 16-17. Claims 13 and 50 are directed to a connection strap(hinge) on species shown in figure 18. Claims 42, 47 and 75-76 are directed to a security flange on the bottleneck on species shown in figure 9.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 41, 43-46 and 48-49 are rejected under 35 U.S.C. 102(b) as being anticipated by the German reference (4433238).

The German reference teaches a container 6 with a nozzle(open end) and a stopping ledge 13. The German reference further teaches a cap 3 with a breakaway

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skirt comprising an outer skirt 11, a plurality of inner skirts 12 and a plurality of security fins 14 in between the inner skirts 12. The terminal edges of the security fins are spaced from the stopping ledge 13 as the fins are spaced below the ledge as shown in figure 1.

With respect to claims 45-46, see figure 1 which shows a stopping ledge 13 that is curved/rounded at the top and edges/corners and a planar bottom.

With respect to claims 48-49, the security fins 14 have the same structure as applicant's fins, therefore the fins of the German reference inherently must perform the same function. In addition, the fins provide resistance to inward deflection as shown in figure 6.

5. Claims 41, 43-46, 48-49 and 89 are rejected under 35 U.S.C. 102(b) as being anticipated by McBride (US 5,004,112).

McBride teaches a container (C) with a nozzle(open end) and a stopping ledge (L). McBride further teaches a cap 10 with a breakaway skirt comprising an outer skirt 26, a plurality of inner skirts 32 and a plurality of security fins 34 in between the inner skirts 32. The terminal edges of the security fins are spaced from the stopping ledge (L) as shown in figure 2.

With respect to claims 45-46, see figure 2 which shows a stopping ledge (L) that is curved/rounded at the top and edges/corners and a planar bottom.

With respect to claims 48-49, the security fins 34 have all of the structure set forth, therefore the fins 34 inherently must perform the same function. In addition, the

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fins provide resistance to inward deflection as these ribs provide a thickened region to the tamper band.

With respect to claim 89, see figure 1.

Allowable Subject Matter

6. Claims 1, 5-11 and 69-73 are allowed.

Response to Arguments

7. Applicant's arguments filed September 17, 2003 have been fully considered but they are not persuasive. Applicant argues that the German reference (4433238) does not teach that the security fins are spaced from the container. While this is correct, this is not the language in the claims. The claims state that the terminal edges of the security fins are spaced from the ledge. As explained in the above rejection, the German reference teaches that the terminal edges of the security fins are spaced from the ledge as the fins are located spaced below the ledge. See especially figure 1.

8. In view of applicant's arguments that the security fins are spaced from the container (even though the language of the claims differ from this argument), a new ground of rejection has been set forth above, in anticipation of applicant amending the claims to be commensurate in scope with this argument.

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Conclusion

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nathan J. Newhouse whose telephone number is (703)-308-4158. The examiner can normally be reached on Monday-Thursday 7:00-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee W. Young can be reached on (703)-308-2572. The fax phone number for the organization where this application or proceeding is assigned is (703)-872-9302.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)-308-1148.

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Nathan J. Newhouse
Primary Examiner
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